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No. 82-187

In the Supreme Court of the United States

OCTOBER TERM, 1982

FRANK LUJAN, PETITIONER

v.

UNITED STATES DEPARTMENT OF THE INTERIOR,
JAMES G. WATT, SECRETARY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE DEPARTMENT OF THE INTERIOR IN OPPOSITION

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1. In 1970, the Department of the Interior's Bureau of Land Management conducted a dependent resurvey of certain federal land in New Mexico. Near the federal land is land owned by Frank Lujan, the petitioner herein. The government resurvey did not result in any federal claim to land owned by the petitioner, but the relocation of certain section corners resulted in a claim by Michael Martinez, a private landowner adjacent to the petitioner, to certain lands previously claimed by the petitioner.

Petitioner administratively challenged the Department of the Interior's survey. He was eventually held not to have met his burden of establishing by clear and

convincing evidence that the survey was not an accurate retracement and reestablishment of the lines of the original survey. *Frank Lujan*, 40 I.B.L.A. 184 (1979). Petitioner sought judicial review of the administrative decision, but his complaint was dismissed by the district court on the ground that it lacked subject matter jurisdiction. *Frank Lujan* v. *United States Department of the Interior*, No. CIV-79-455C (D.N.M. Feb. 11, 1980) (App. A, *infra.*, 1a–4a). Lujan appealed from this decision.

In the meantime, Martinez brought in the state court an ejectment action against the petitioner, and prevailed. *Martinez* v. *Lujan*, No. 13,521 (N.M. Oct. 26, 1981) (App. B, *infra.*, 5a–8a). Lujan did not petition to this Court for review of the judgment of the New Mexico Supreme Court.

The court of appeals, when it considered this case, recited the foregoing facts, noted that petitioner had been accorded "a full and fair opportunity to litigate in the state court proceeding the very issues which he now seeks to relitigate in the federal district court, namely, the accuracy of the 1970 BLM [*i.e.*, Bureau of Land Management] resurvey and the effect thereof, if any, on his common boundary line with Martinez" (Pet. App. 16-17), and concluded that under the doctrine of collateral estoppel, petitioner could not in the instant suit relitigate the issues actually litigated and determined by the state court.

2. The Department of the Interior does not, by virtue of its dependent resurvey, claim any land owned by petitioner, nor does the Department assert that the resurvey in any way affects the boundary between Lujan and Martinez. Indeed, the law is that no resurvey or retracement of a public land survey may be so executed "as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement." 43 U.S.C. 772.

Since the land involved in this boundary dispute is entirely in private ownership, and not subject to any claim by the United States, the principles by which that boundary dispute is to be resolved are to be found in the general body of state property law. *State Land Board* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363, 372 (1977). State courts are the ultimate expositors of state law, and this Court has repeatedly held that it is bound by the construction put upon state law by state courts. *Mullaney* v. *Wilbur*, 421 U.S. 684, 691 (1975). Since the Supreme Court of New Mexico has resolved the matter which is truly in issue here—the dispute between private parties as to the boundaries of their adjacent tracts—no federal question remains for this Court to decide.

To be sure, it may seem that petitioner was caught in a Catch-22-like situation because the State and Federal tribunals unduly deferred to each other. But the fact is that the New Mexico Supreme Court did not decide the boundary question on the ground of the mere existence of the federal administrative decision; rather, that court was persuaded that the I.B.L.A. decision rejecting the challenge to the BLM survey and its location of a certain quarter corner was "well reasoned" (App. B, *infra*, 8a), and it found that petitioner had presented no evidence to indicate that the quarter corner had originally been located elsewhere. *Id.* at 7a–8a. At all events, it was not for the federal district court or court of appeals to interfere with the State court proceedings or to determine whether too much weight was given to the federal survey. Nor is that a proper question for this Court. And, even if the district court might have reviewed the IBLA ruling at the instance of petitioner, no decision by that court, or the court of appeals, or indeed this Court, can affect the final judgment of the New Mexico Supreme Court.

It is respectfully submitted that the court of appeals' ruling was correct, and that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

SEPTEMBER 1982

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

No. CIV-79-455 C

Filed Feb. 11, 1980

FRANK LUJAN, PLAINTIFF,

v.

THE UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL., DEFENDANTS.

MEMORANDUM OPINION

This case is presently before the Court on a Motion by Defendants to Dismiss the Amended Complaint. For the reasons expressed below, that Motion will be granted and the case dismissed.

STATEMENT OF THE CASE. Plaintiff owns land located in San Miguel County, New Mexico. In 1880 an original survey was conducted covering Plaintiff's property. Between June 15 and August 15, 1970, a "dependent resurvey" was conducted by a survey team from the State Office, Bureau of Land Management, Santa Fe, New Mexico. The purpose of the resurvey was to determine the boundaries of public lands to the west of Plaintiff's land. The resurvey reestablished a boundary line between the property of Plaintiff and the property of Michael and Lillie Martinez, which would mean that Plaintiff's land would be made smaller. A brass cap was put in place by the Bureau of Land Management (BLM) in conformity with the dependent resurvey.

In May 1976 the Martinez' filed suit against Plaintiff in State Court, the District Court of San Miguel County, Civil No. 21,677. That suit is an action in ejectment seeking to remove Plaintiff from the now-disputed land. Plaintiff states in his affidavit,

> (i)t is my information and belief that the Plaintiffs in that action intend to rely on the "accuracy" of a presently emplaced B.L.M. brass cap for the north quarter of Section 17, T. 17N., R.24E., N.M.P.M., in order to attempt to prove their allegation that I am unlawfully occupying property which they claim is theirs. The cap and the property are the same caps and property which is in dispute in 40 IBLA 184 (1979).

Affidavit of Frank Lujan, October 23, 1979. That suit is still pending.

A hearing was held in Las Vegas, New Mexico, on November 30 and December 1, 1977, before an administrative law judge of the Office of Hearings and Appeals, Bureau of Land Management. At that hearing, where this Plaintiff challenged BLM's 1970 resurvey, the Martinez' were allowed to intervene. The boundary issue was decided adversely to Plaintiff. *Frank Lujan*, 40 I.B.L.A. 184 (1979).

In this action, Plaintiff seeks *de novo* review of the adverse administrative decision, alleging that as a direct and proximate result of that decision he has suffered and will suffer damages to his property rights. Defendants are the Department of Interior, Secretary Andrus, and the United States.

SUBJECT MATTER JURISDICTION. Plaintiff alleges jurisdiction under the Administrative Procedures Act (APA), 5 U.S.C. Sections 701-706, and 28 U.S.C. Section 1331 (federal question). He alleges no amount in controversy, but Section 1331 was recently amended to

remove the $10,000.00 amount in controversy requirement in any action brought against the United States, its agencies and officers.

The Court notes that the APA does not contain a direct jurisdictional grant. There was a conflict in the Circuit Courts of the United States as to whether the APA should be read as containing an implied grant of jurisdiction to the district courts to hear any and all appeals of administrative decisions. That conflict has recently been resolved by the Supreme Court. It held

> (T)he better view is that the APA is not to be interpreted as an implied grant of subject-matter jurisdiction to review agency actions.

Califano v. *Sanders*, 430 U.S. 99, 105 (1977).

Thus, jurisdiction must depend upon whether there is a "federal question" raised by the complaint. I find there is none. The gravamen of the complaint is title to real estate located in New Mexico. That issue can only be litigated in the State courts, and, in fact, is presently the subject of the ejectment action mentioned above. No federal question has been pointed out by Plaintiff, except for an argument in his brief that the complaint raises "several issues regarding violations of Plaintiff's rights as secured by the Constitution, statutes and law." Plaintiff's Brief at p.2, October 26, 1979. The resurvey was conducted pursuant to a manual of the Department of Interior, Manual of Instructions for the Resurvey of the Public Lands of the United States, Section 400 (1947). No statute has been cited to the Court, however, which authorizes or requires the survey activity complained of.

Further, no provision of the Constitution has been pointed out by Plaintiff which would provide the basis for this action. He has not alleged a due process violation involving his property rights, nor could such an allegation withstand muster. He does not maintain that

the resurvey done in 1970 has had any direct effect on his property rights. The most he alleges is that the Martinez' intend to rely on the resurvey in their ejectment action. While that may be the case, the Court here is asked to set aside the administrative decision of 1979. That decision would, of course, be hearsay in the ejectment action. The 1970 resurvey itself would at most be "mere evidence" as to the accuracy of the boundary it appears to reestablish between the properties of Plaintiff and the Martinez'. *Ben Realty Co.* v. *Gothberg*, 56 Wyo. 294, 109 P.2d 455 (1941). And the manual referred to above even states, "...the resurvey cannot affect the rights of owners situated outside of the boundaries of public lands." Manual Section 646. *See, also, Ben Realty Co.* v. *Gothberg, supra; United States* v. *State Investment Co.*, 264 U.S. 206 (1924). Thus, absent federal action amounting to deprivation of Plaintiff's property rights, no federal question is presented here.

Even if this Court had subject matter jurisdiction over this Complaint, I would probably refrain from hearing the case and instead defer to the state court action filed previous to this action. There, the issue of the validity of the 1970 resurvey will be fully litigated, and an action here would merely be duplicative.

An order of dismissal will be filed in accordance with the opinions expressed.

/s/SANTIAGO E. CAMPOS
United States District Judge

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 13,521

Filed Oct. 26, 1981

MICHAEL MARTINEZ AND
LILLIE M. MARTINEZ, HIS WIFE,
PLAINTIFFS-APPELLEES,

v.

FRANK LUJAN AND
CIPRIANO LUJAN, HIS SON, DEFENDANTS-APPELLANTS.

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY

DECISION

FEDERICI, Justice.

Appeal is from the District Court of San Miguel County. Plaintiffs (appellees) sought to eject defendants (appellants) from land claimed by plaintiffs. The trial court entered summary judgment for plaintiffs. Defendants appeal. We affirm.

Appellees seek to eject appellants from a portion of land deeded to appellees, described as follows:

> The SE 1/4 of SW 1/4 of Section 8, and the NE 1/4 of NW 1/4 of Section 17, in Township 17 North of Range 24 East of the New Mexico Meridian, excepting therefrom one vara of land bounded as follows: on the north by land formerly of Cipriano Lujan, on the south by land formerly of Cipriano Lujan, on the east by land formerly of the public domain and on the west by the river and being the same land conveyed to Cipriano Lujan on March 25, 1926 by Gregorio Gallegos and Rafaelita Chavez de Gallegos, his wife, and Carlota Estrada

by their deed recorded in Book 96, page 138 of the Spanish Deed Records of San Miguel County, New Mexico.

The chain of title shows that Manuel D. Gallegos quieted title to the land described above in 1954. Manuel Gallegos conveyed to Meliton Gallegos, et ux., who transferred the same land to appellees. The deed to appellees contains the description set forth above. Appellants claim to be the successors in interest to a parcel of land described as "one vara", being a part of the land described in the deed.

In order to determine from which land appellants were to be ejected, appellees employed a surveyor to prepare a survey of their lands, here referred to as the Garcia-Marquez survey. Meanwhile, appellants had been involved in seeking federal administrative and judicial relief in an effort to show that a 1970 government resurvey incorrectly placed a brass cap upon which the Garcia-Marquez survey relied. Appellants have exhausted their federal administrative appeals, all of which have been decided against them. On appeal to the Federal District Court, the court found that there was no federal question involved and that the issue concerning the resurvey should be litigated in state court.

Appellees' had made a prima facie case consisting basically of the following: (1) a deed describing appellees' land; (2) the Garcia-Marquez survey showing the parameters of the land described in the deed; (3) a legal opinion signed by Administrative Law Judge Honorable Douglas E. Enriquez, which concluded that a brass cap, upon which the Garcia-Marquez survey relied, was correctly placed following a federal resurvey in 1970. Once appellees have made a prima facie showing that they were entitled to summary judgment, the burden shifted to appellants to show that there was a genuine factual

issue and that appellees were not entitled as a matter of law to summary judgment. *Goodman* v. *Brock*, 83 N.M. 789, 498 P.2d 676 (1976).

Appellants claim that summary judgment was incorrectly granted by the trial judge and that issues of fact remain in this case for the following reasons: (1) Since the Garcia-Marquez survey includes lands described in appellees' deed, it must be established whether the survey includes the one vara excepted in the deed; (2) there is a discrepancy in the number of acres described in appellees' deed and the number of acres described in the Garcia-Marquez survey, in that the deed describes about 58 acres, while the survey describes about 74 acres (this discrepancy, appellants contend, supports their view that the Garcia-Marquez survey includes the "one vara" described in appellees' deed); (3) the trial court did not adequately consider the fact that appellants were cultivating the land in issue at the time appellees acquired the deed; (4) the proper location of the brass cap indicating the quarter corner upon which the Garcia-Marquez survey is based, is yet to be determined, and although the federal administrative law court found that appellants have not proved their case by clear and convincing evidence, it did indicate that doubts remain as to the proper location of the brass cap.

Summary judgment is properly granted where proof in favor of the motion is not controverted by the party opposing the motion. *Goodman* v. *Brock*, *supra*.

Appellants' claim that an issue of fact remains in this case is without merit. Although appellees' deed contains an exception of the one vara to which appellants lay claim, appellants have presented no documents, affidavits or other evidence that the land from which appellees seek to eject appellants is the one vara mentioned in the deed. The Garcia-Marquez survey shows that appellants have been in possession of considerably

more than one vara of land. Appellants have not presented a survey of their own; they have not argued adverse possession; they have presented no documents showing color of title, nor have they shown that they have paid taxes on the one vara in dispute.

An important exhibit considered by the trial judge was the written opinion of the federal administrative law judge. Although there may be some question as to the admissibility of the opinion, the issue was not raised below by appellants. The administrative court opinion was well reasoned and concluded that the brass cap upon which the Garcia-Marquez survey was based was properly determined by a federal resurvey conducted in 1970.

Appellants have not met their burden of showing that a genuine factual issue remains in this case.

The trial court is affirmed.

This decision is not to be published nor cited as precedent.

IT IS SO ORDERED.

/s/ WILLIAM R. FEDERICI
WILLIAM R. FEDERICI, *Justice*

WE CONCUR:

/s/ DAN SOSA, JR.
DAN SOSA, JR., *Senior Justice*

/s/ H. VERN PAYNE
H. VERN PAYNE, *Justice*